

# Las Vegas

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LAS VEGAS, NEW MEXICO, DE

WHOLE NUMBER 91

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## Las Vegas Gazette

LOUIS H. H. L.

Editor & Publisher.

**NEW MEXICO**

Her Natural Resources and

ATTRACTIONS.

Published by ELIAS BREVOORT,

General Land Agent, Santa Fe, N. M.

Republished by authority of the Author.

**PRIVATE LAND CLAIMS.**

[Continued.]

The Indian "pueblo grant" claims constitute a series of claims distinct from that of the "private claims." They are community grants, designated at the surveyor general's office as A, B, C, etc., down to T, inclusive, and have all been reported and confirmed, and many of them been surveyed and, in 1864, patented by the government.

In neither class of claims has any fraudulent one been detected and exposed; and, indeed, very few spurious claims, if any at all, are believed to exist in the Territory—the low value of lands here up to this time being an insufficient incentive to the fabrication of spurious muniments; though, as our lands, with the advent of railroads, capital and immigration, increase in value, the incentive to their fabrication will correspondingly augment, and it may be that New Mexico will then rival California in the production of fraudulent land grants. For, as Surveyor General Proffit remarks, "it is becoming known that the country enjoys a magnificent climate, that all its valleys are well adapted to a variety of crops, and that its mesas or table-lands are the finest stock grazing regions in the world. Stock feeds the year round upon the grama and other nutritious grasses; and the winters are so mild and equable, and comparatively stormless, that stock needs little or no care, except herding, to prevent straying or other loss. In view of these and other considerations, there is a large and increasing call for public surveys, very many preferring to obtain their land direct from the government, instead of attempting to purchase in small quantities from grant owners. The impression which has prevailed in official circles at Washington that all, or nearly all, the Territory that is of any value was claimed under or covered by grants, is erroneous and without foundation in fact."

In the adjudication of land titles in New Mexico held under concession from either of the former governments, the stipulations and the principles of the treaty of Guadalupe Hidalgo, the model international compact of the age, with respect to landed property having a status at its date, enter and largely govern in their determination. Our government in deciding upon the validity of these grants always appears to have been actuated by the most liberal principles, as evidenced in the legislation of congress and in the decisions of the supreme court concerning them. If the grants were incipient and inchoate at the date of the change of national sovereignty under the treaty of Guadalupe Hidalgo, or if acquired in good faith, though imperfect in form, or defective in requisites not absolutely essential, they are recognized and confirmed. The claimant therefore under one of these old grants, though he hold in good faith but the color of title, may rely with confidence upon the government for an equitable and generous consideration of his claim.

As showing the large authority and powers exercised in New Mexico by the governors and captains general under the vicereignty, and by the governors and political chiefs under the subsequent different governments of Mexico in the disposal of the royal and national domain, then almost absolutely useless and without value, in this distant section of Mexico (the boundaries and limits of the tracts granted being often described simply as from mountain to mountain, and from river to river), we here insert extracts from two decisions of the United States surveyor general for New Mexico, made upon private land claims Nos. 4 and 17, adjudicated by him in 1866 and 1867, and both of which—each for at least a million acre tract—were approved by him. We believe it is a settled principle that the official acts of an officer are the acts of his government, under whose laws he officiates, and hold good until annulled. And if the principle in international law that a person exercising public authority represents *pro tanto* his government, which is but the embodiment in an international

all the employees and persons exercising authority, be the correct and principle, then the facts stated by the surveyor general in the extracts mentioned become an important consideration in connection with the adjudication of our grants, since these are to be not under the provisions of our constitution and laws, but under the laws and guarantees of that treaty.

At the period (1843) when this grant was made, the province of New Mexico had just been freed from a series of revolutions and commotions which had caused general anarchy of the republic to suffer upon the governor of the province extraordinary and almost absolute power in all things relating to the domestic affairs and internal government of the province. Under this authority and the extraordinary powers so vested in him, his grant is purported to have been made.

"The supreme authorities of the remote provinces of New Spain—afterwards the republic of Mexico—exercised from time immemorial certain prerogatives and powers which, although not positively sanctioned by congressional enactments, were universally conceded by the Spanish and Mexican governments; and there being no evidence that these prerogatives and powers were revoked or repealed, by the supreme authorities, it is to be presumed that the exercise of them was lawful. The subordinate authorities of the provinces implicitly obeyed these orders of the governors, which were continued for so long a period, until they became the universal custom or unwritten law of the land wherein they did not conflict with any subsequent congressional enactment. Such is the principle sanctioned by the Supreme court of the United States, as expressed in the case of Fremont versus the United States (17 Howard, page 542), which decision now governs all cases of a similar nature."

In concluding our chapter upon private land claims in New Mexico, we present the following article, written at our request by Judge Joab Houghton of Santa Fe, who has resided in the Territory for more than thirty years, and who during that time has held here the offices of United States vice-consul and commercial agent in 1844 (before the conquest), chief justice of the territorial government in 1849, register of the United States land office in 1851, and associate justice of the supreme court of New Mexico in 1855, and who is now one of the leading practicing lawyers of the Territory.

The people of New Mexico have just ground of complaint, not only on account of the course of procedure adopted by the administrative officers of the Land Department of the government respecting their grants of land derived from their former government, the Republic of Mexico, but also the evidently erroneous, if not unconstitutional legislation of Congress in assuming to cut down and curtail the area and extent of these grants in several instances to less amount and extent than that ceded by the government of Mexico, and in which they have been placed in judicial possession by the legal officers of the government years before the acquisition of the Territory by the United States, under the treaty of 1848, between the two governments. Such legislation has not only operated oppressively and injuriously on the interests of the numerous holders and occupants of these grants, but upon the prosperity of the whole people of New Mexico, by creating doubt and confusion as to all titles to lands in the acquired Territory of New Mexico, granted to them or their predecessors as citizens of the Republic of Mexico; and by their held and possessed as bona fide grants, and as such considered and respected by the Government of Mexico up to the date of the transfer of her sovereignty over the Territory, to the United States. That the Government of Mexico so held and respected these grants of land to her citizens, and that she considered them segregated from the public domain, and as private property, lawfully in the possession of the grantees, and their legal representatives, is conclusively shown by the safeguard thrown around these private vested rights of her citizens inhabiting the ceded Territory at the date of the Treaty of Cession. In Article VIII of that Treaty—the Treaty of Guadalupe Hidalgo, of February 2, 1848—are the following stipulations:

"Mexicans now established in the Territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present Treaty, shall be free to continue where they now reside, or to return at any time to the Mexican Republic, retaining the property they possess in said Territories, or by disposing thereof, and removing the proceeds wherever they please, without their being subjected on this account to any contribution, tax or charge, whatever."

"In said territories property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of those and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally as ample as if the same belonged to citizens of the United States." And in Article 9:

"The Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the United States, and be admitted to the enjoyment of all the rights of citizens of the United States, and in the mean time shall be maintained, and in the free enjoyment of their liberty and property."

It is evident that these solemn treaty stipulations, agreed to, signed and ratified by both the high contracting parties, mean exactly what they state—nothing more, nor nothing less, which is, that "property of every kind now (at the date of the Treaty) belonging to Mexicans" must be inviolably respected, with equal guarantees, as if the same belonged to citizens of the United States, whether retaining the character of Mexican citizens, or becoming citizens of the United States, and to be equally protected in the enjoyment of the same.

Is it not clear and beyond doubt that Mexico, in making this treaty, meant that the whole property her citizens in these ceded territories had and then possessed under her government and authority, should be thus protected and guaranteed, and that the United States also thus understood it, and by agreeing to, and ratifying the treaty, pledged the nation's faith to the fulfillment of the same?

By what right, therefore, can Congress, in disregard of the solemn stipulations of this treaty of Guadalupe Hidalgo—the highest law of the land, under the constitution, in all things to which it pertains—by its legislation to alter, amend or add to, the meaning, intent or obligation of that treaty, or in any way diminish, curtail or destroy the property, whether land or other property, which the government of the United States is under obligations to guarantee and protect to the possessors? Would it not be a stain upon the nation's faith, and an outrageous invasion of the private vested rights of those acquired Mexican citizens and their heirs and assigns, to legislate *pro tanto* into the treaty of Guadalupe Hidalgo, "That they shall be protected in the property they possessed at the date of the treaty: provided no one individual claimed more than eleven square leagues of land, eleven thousand sheep, eleven hundred mules and asses, and other property in proportion? Yet upon this principle Congress has legislated on the land grants in New Mexico, ignoring its own legislation in the Act of July 22, 1854, establishing the principle upon which the private land claims of New Mexico should be investigated and decided as to the validity of their title "under the laws, usages and customs of the country, before the cession to the United States," and reported to Congress for confirmation, when found to be bona fide grants made by Spain or Mexico, and lawfully in possession of the grantees, or their legal representatives at the date of the treaty.

Congress has assumed the position and functions of a court, for the correction of the errors of the Mexican government, in the execution and practice of her own laws, in the granting and distribution of her own lands, and in the segregation of the same from her own public domain, and has in one or two instances legislated to the effect, that neither the government of Mexico, nor the governors and legislative assemblies of New Mexico, late a department of the Republic of Mexico, and acting under its authority and laws, had a right, under the colonization laws of Mexico of 1824, and regulations of 1828, to grant to one